

In re) Fair Hearing No. 8872
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a 25-year-old man with a 10th grade education and no relevant work experience.

2. The petitioner is a severe and chronic sufferer of Crohn's disease, a disorder of the digestive system which, during acute periods, causes him diarrhea, abdominal cramping and pain, vomiting and weight loss.

3. The petitioner also has been diagnosed as suffering from an adjustment disorder but this disorder presents no significant barrier to functioning.

4. The petitioner applied for Medicaid in May of 1988 alleging disability due to his Crohn's disease.

5. Because the petitioner did not consult a physician in the six months prior to his application and offered no oral testimony, there is no evidence as to his condition in the time period immediately preceding his application.¹

6. The petitioner had an emergency hospitalization in June of 1988 for an acute flare-up and had surgery to drain an abdominal abscess in July of 1988. During that period, the petitioner who is 5 feet 10 3/4 inches tall, had weights recorded from 113 to 118 pounds. After the operation, he initially appeared to be doing well but an obstruction developed in his bowels and he had surgery again in November of 1988 to correct that problem.

7. Reports from his treating physician and his primary physician dated January 6, 1989 and January 19, 1989 respectively it is found that at least as of January 1989, the petitioner had no bloody stools, no anemia manifested by hemocrit of 30 percent or less, no persistent or recurrent systemic manifestations, no intermittent obstructions of the bowel, no serum albumin of 3.0 gm. per deciliter or less and no serum calcium of 8.0 mg. per deciliter or less.

8. No information was available from either physician on the patient's weight since July of 1988 and the patient did not present any evidence on this issue.

9. Based on the above reports from both his physicians, it is found that the petitioner was expected to improve following his surgery although he continued to have an active fistula and, as of at least January, 1989, had no restrictions in his ability to lift, carry, stand, or walk.

The petitioner's sitting is probably restricted by the continued presence of a peri-anal fistula.

10. The evidence shows that during periods of flare-up, the petitioner is totally unable to function due to exhaustion and pain. It appears from the medical evidence, that the petitioner was in a state of acute flare-up for most of the period from May to December of 1988. However, there is no evidence as to the petitioner's condition after December 1988. Neither of the patient's physicians could evaluate his pain due to their lack of recent contact with him and the petitioner himself presented no evidence on his pain or energy levels since December of 1988.

11. Although the petitioner reported in May of 1988 that he had little by way of social contact and few activities, there is no evidence upon which to draw any conclusion regarding his activities from January through May of 1989.

ORDER

The decision of the Department is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner argues that his disease is severe enough to meet the criteria in the listings of impairment at 20 C.F.R. § 404, Subpart P, Appendix 1, Part A, Sections 5.07D. and 5.08A:

5.07 Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy).
With: . . .

D. Weight loss as described under § 5.08.

5.08 Weight loss due to any persisting gastrointestinal disorder.

(The following weights are to be demonstrated to have persisted for at least 3 months despite prescribed therapy; and expected to persist at this level for at least 12 months.)
With:

A. Weight equal to or less than the values specified in Table I or II; . . .

TABLE I-MEN

Height (inches)

70.....	115
71.....	118

What the petitioner argues is undoubtedly true for at least May through December of 1988. However, that period only spans eight months and the petitioner is required by the regulation cited above to prove disability for twelve continuous months. That he has failed to do

Although the petitioner obviously has had a great deal of difficulty with this disease, he must put on some evidence that it caused him functional restrictions either prior to or after his application making a year in total.

As the petitioner's physicians expected him to improve in January of 1989, nothing can be assumed about the time period from then to May, 1989. By the time the petitioner submitted his legal argument in this case in May of 1989, one year had passed since his application and speculation was no longer needed. He had an excellent opportunity to appear at the hearing to say what had actually happened during those last four months. Unfortunately, although assisted by able counsel, he did not avail himself of that opportunity and without that crucial evidence, no finding of disability for those months can be made. If the petitioner continues to be as sick as he was in mid 1988, he is encouraged to reapply and to follow through by producing the required evidence.

FOOTNOTES

¹One treating physician stated that he had been "historically disabled" in the year prior to November of 1988 and another said he has not been able to lead a very productive life. However, there is no evidence indicating any specific functional barriers during that time.

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